

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Case No. 17-cr-0294 (WMW/TNL)

Plaintiff,

ORDER

v.

Fausto De Los Santos Garcia (3),

Defendant.

Defendant Fausto De Los Santos Garcia moves to reopen or set aside the judgment in this case pursuant to Rule 60(b), Fed. R. Civ. P. (Dkt. 312.)

On April 28, 2022, this Court denied De Los Santos Garcia's untimely motion to vacate his conviction and sentence pursuant to 28 U.S.C. § 2255, declined to issue a certificate of appealability, and entered judgment. De Los Santos Garcia subsequently appealed to the United States Court of Appeals for the Eighth Circuit and applied for a certificate of appealability. The Eighth Circuit denied that application and dismissed the appeal on June 7, 2022.

De Los Santos Garcia now moves to reopen or set aside the April 28, 2022 judgment, pursuant to Federal Rule of Civil Procedure 60(b). To prevail on such a motion, a defendant may not "merely restate[] the arguments presented in the section 2255 motion." *United States v. Whitford*, 758 F.2d 329, 331 (8th Cir. 1985). Rather, a defendant is "required to show—among other things—that the evidence proffered with the [Rule 60] motion was discovered after the court's order and that [the defendant]

exercised diligence to obtain the evidence before entry of the order.” *Anderson v. United States*, 762 F.3d 787, 794 (8th Cir. 2014); *accord Whitford*, 758 F.2d at 331 (observing that a defendant must state “grounds upon which he could justify relief from judgment under Rule 60(b),” such as “newly discovered issues of material fact not known to the district court at the time of filing the section 2255 motion”). De Los Santos Garcia’s motion fails to do so. He has neither identified an error of law or fact in the Court’s April 28, 2022 Order, nor presented newly discovered material evidence that would excuse the untimeliness of his Section 2255 motion. Instead, he repeats arguments that this Court previously rejected.

For these reasons, the Court denies De Los Santos Garcia’s motion.

ORDER

Based on the foregoing analysis and all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Defendant Fausto De Los Santos Garcia’s motion to reopen or set aside the judgment, (Dkt. 312), is **DENIED**.

Dated: August 11, 2022

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge